IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8255 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANUBHAI JETHANAND HEMNANI

Versus

STATE OF GUJARAT

Appearance:

Mr D M Thakker for M/S THAKKAR ASSOC. for Petitioner

Mr S K Patel, AGP for Respondent No. 1

DELETED for Respondent No. 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 21/09/2000

ORAL JUDGEMENT

The petitioner has preferred this petition under Article 226 read with Articles 14, 19 21 and 22 of the Constitution of India challenging the order of detention dated 14.7.2000 passed by the learned District

Magistrate, Rajkot District, in exercise of powers conferred on him by section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 on various grounds.

2. In response to the Rule, Mr S K Patel, learned AGP appeared for respondents No.1,2 and 3. I have heard the learned Advocates for the parties and have perused the papers.

3. Learned Advocate for the petitioner has contended that the petitioner had submitted representation on 24.7.2000 which was received by the District Magistrate on 26.7.2000 and the said representation was forwarded to the State Government very late and thereafter the State Government took time in disposing of the representation and hence there was inordinate delay in deciding the representation. That therefore, further detention of the petitioner is illegal.

4. In response to the said allegation, the respondents have filed affidavit of Mr P R Shah, Dy.Secretary to the Government of Gujarat, Food, Civil Supplies and Consumers Affairs Department, Gandhinagar. The aforesaid contention has been dealt with in para 3 of the said affidavit wherein it has been mentioned that the said representation was made on 24.7.2000 but it was incomplete. Therefore, the District Magistrate was requested to send it again. That thereafter, the complete representation was sent on 3.8.2000. Thereafter the file was moved by the Special Branch through the Under Secretary. Then it was placed before the Dy.Secretary on 4.8.2000 and that it was placed before the Secretary on 5.8.2000 and on 7.8.2000 the concerned Minister has taken decision and rejected the representation of the petitioner. It is, therefore, submitted that there was no delay in consideration of the said representation of the petitioner. It is very clear that as per the postal acknowledgment shown by the learned Advocate for the petitioner, the District Magistrate had received the representation on 26.7.2000. Even if it is assumed that the representation was sent by the District Magistrate on the next day and there was no delay in sending the same, the fact remains that the representation sent by him was incomplete and, therefore, he was required to send it again which was received by the State Government on 3.8.2000. This shows that there was a delay of six to seven days. In other words, passage of time of six to seven days remains unexplained.

4. The learned AGP submitted that there was some

fault in the fax machine and therefore, complete representation could not be received by the Government and it was received partly and, therefore, it was required to be referred back. This aspect of the case has not been mentioned in the affidavit which has been filed today. Therefore, it cannot be said that the delay can be attributed to the fault of fax machine. The fact remains that the representation was received by the District Magistrate on 26.7.2000 and it was submitted to the State Government on 27.7.2000 but it was incomplete and therefore, it was required to be referred back and thus there was a considerable passage of time of six to seven days. This is to be treated to be inordinate delay which has not been explained as aforesaid.

5. On this aspect of the case, learned Advocate for the petitioner has referred to a decision in Special Civil Application no.6425 of 2000 dated 1.9.2000 (Coram : J M Panchal, J.). Similar facts arose in the said matter. There also the District Magistrate had sent representation late and therefore, there was delay in disposal of the said representation. The delay was of 5 days. Therefore, it was held by this Court that the said delay was not explained and, therefore, it will have to be held that the continued detention of the detenu has become illegal. The learned Judge of this Court had relied upon a decision of this Court in the case of Urmilaben Navnitlal Gandhi v. The Commissioner of Police, Surat City & Ors, reported in 1994 (2) GLH (UJ) 10 for deciding the aforesaid matter. There is no reason to differ from the said decision of this court referred to hereinabove. In this case also there was inordinate delay in disposal of the representation of the petitioner, and therefore, the further detention of the petitioner will have to be treated to be illegal. Therefore, the detention cannot be sustained and is required to be quashed and set aside.

6. Learned AGP has relied upon a decision of the Apex Court in the case reported in 1984(1) GLR 843 wherein it has been observed that the State Government required further details from the District Magistrate and for that purpose, some time was taken in getting the said information which cannot be treated to be inordinate delay in consideration of the representation of the detenu. This decision will not apply to the facts of this case. There was no case was of getting additional material from the District Magistrate. Here in this case, the District Magistrate himself was in possession of full text of the representation running into 4 pages but if he sends two pages of the representation retaining

the remaining two pages with him, the delay in rendering the remaining copies will not attract the aforesaid decision and, therefore the said decision will not apply to the facts of the case before us.

7. In view of the above, this petition is allowed. The impugned order of detention dated 14.7.2000 passed by the District Magistrate, Rajkot District is quashed and set aside. The detenu is ordered to be set at liberty forthwith if no longer required in any other case. Rule made absolute accordingly. No order as to costs.

21.9.2000 [D P Buch, J.]
msp